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HUMAN RIGHTS COMMITTEE

Forty-fourth session

SUMMARY RECORD OF THE 1137th MEETING

Held at Headquarters, New York,
on Thursday, 2 April 1992 at 3.00 p.m.

Chairman: Mr. AGUILAR (Vice-Chairman)

later: Mr. POCAR

CONTENTS

Consideration of reports submitted by States parties under article 40 of the Covenant (continued)

Third periodic report of Colombia (continued)

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In the absence of the Chairman, Mr. Aguilar, Vice-Chairman, took the Chair

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (continued)

Third periodic report of Colombia (CCPR/C/64/Add.3) (continued)

1. At the invitation of the Chairman, Mr. Cepeda and Mr. Melo (Colombia) took places at the Committee table.

2. Miss CHANET said that Colombia's written report was a sound one and the oral presentation had further helped the Committee to understand the evolving situation in Colombia. To say that the Government faced difficulties was an understatement; examining magistrates had repeatedly been attacked and assassinated, and Colombia had one of the highest crime rates in the world, as paramilitary groups and common criminals had been operating with near impunity.

3. The previous constitution had been somewhat deficient in ensuring respect for human rights. It remained to be seen whether the new Constitution would improve matters in that regard. At any rate, it was not confined to theory, but contained practical provisions for implementation. One such provision concerned the remedy of tutela which, if she was not mistaken, was a kind of preventive habeas corpus. She would like more information on how such actions were initiated and what kind of evidence of a personal threat the applicant must adduce.

4. She welcomed the provision on the criminal responsibility of persons acting under orders, but, like Mr. Mavrommatis, she regretted that the armed forces had been exempted. It seemed contradictory for such a provision to be introduced only to be suspended in the case of a particular group. The replacement of the system of examining magistrates by an adversary system also seemed to represent progress, but it was hard to see how the change would help in the struggle against rampant criminality. If the examining magistrates had been eliminated only on account of the many death threats against such magistrates, the effect would only be to shift the threat to the lawyers and public prosecutors. Moreover, an adversary system could be used to guarantee impunity to the big narcotics traffickers. The Committee would like more information on the authority of the Office of the Attorney-General over the judicial police, specifically whether it extended to disciplinary control.

5. Mrs. HIGGINS said she had been very pleased with the report, which followed the Committee's guidelines. Like Mr. Sadi, she had been struck by the material on the right of self-determination. Many countries acted as if self-determination were of no further concern once the decolonization phase was complete. That, however, had never been the view of the Committee's view. She was glad, too, to see that Colombia was concerned with modernizing its institutions, involving its citizenry, and ensuring democratic pluralism and the efficacy of its electoral system.

(Mrs. Higgins)

6. Like Mr. Mavrommatis, she had been interested in the lifting of the state of emergency and the new constitutional arrangements, but particularly in the circumstances in which a state of emergency might be declared. A particular point of interest, and one on which clarification would be welcome, was the possibility of challenging the reality of such circumstances before the Supreme Court.

7. Another point on which more information was needed was the prohibition of suspension of human rights during a state of emergency, which seemed contradictory. Perhaps the non-derogable rights were the ones meant.

8. No adequate answer had been received to section I (f), regarding communications under the Optional Protocol. Colombia had provided certain supplementary information, and it appeared that the authors of communications 46/1979 and 64/1979 had been victims of the emergency decrees. It was not sufficient, however, to take note of that situation without attempting to remedy it. What was positive in the replies was the indication that although the individuals concerned might not have obtained satisfaction, action had been taken on the underlying practices or legislation. None the less, she urged the Government to look again at possible remedies for individuals. The country's willingness to undertake new measures under the Optional Protocol was a good indication of its willingness to respect human rights.

9. Mr. PRADO VALLEJO noted that there had been good cooperation in the past between Colombia and the Committee, and that the delegation's remarks at the previous meeting had been a useful complement to its report.

10. Much had changed since the last report, particularly in the field of human rights. The new Constitution covered all of the Covenant rights, which had therefore become part of Colombia's fundamental law. However, awareness of human rights was being heightened in Colombia not just at the constitutional level but also at the level of law enforcement. There was a general willingness to make the principles of the Covenant known and to ensure their application.

11. The report hid nothing of the true situation in Colombia, which had very serious problems of violence and lawlessness. Great efforts had been made to maintain peace in the country, with significant success. Subversive groups had been brought into the mainstream of society, some notorious drug traffickers had surrendered, and the rule of law had been extended. Serious problems still remained, as paramilitary groups and drug gangs continued to lay waste broad sectors of Colombian society and some of the paramilitary groups appeared to have links to the armed forces. He would welcome further information on the success of the Government's efforts to disband such groups and on Government efforts to combat the so-called clean-up operations. The international community was most concerned with such extrajudicial settling of accounts, and particularly with the proliferation of paramilitary groups, and

(Mr. Prado Vallejo)

the Committee was interested to know how the Government proposed to resolve that very serious problem.

12. It appeared that only 61 of the 622 members of the armed forces accused of involvement in paramilitary activities had thus far been punished. Assuming that the figures were essentially accurate, perhaps the delegation could explain why Colombia had failed to muster the necessary energy to bring all the accused to trial.

13. The question of whether the paramilitary groups could be disbanded was a most important one; it should not be done by violence, which would only beget more violence. It would be interesting to hear what measures the Government could adopt, in view of the involvement of certain elements of its armed forces.

14. More information would be appreciated on the working of habeas corpus. Efforts had been made to keep all means of recourse available, but habeas corpus was particularly important in the areas where the paramilitary groups were active. He was interested in further information on Decree-Laws Nos. 2790, 099 and 390, the last of which had served to set up a special judicial system. It would be useful to know exactly how that system worked. While the anonymity it ensured to judges, investigators and witnesses alike was meant for their protection, such anonymity could represent a threat to the proper administration of justice.

15. More information was needed as well on the restrictions on lawyers' contact with accused persons. While such access was fully guaranteed after the trial, access reportedly was difficult while the trial was proceeding, and military authorities sometimes prevented all access to the accused. He would like to know what was being done to correct that situation.

16. With reference to judicial police, which was charged with investigating reports of human rights violations, it would be interesting to know how it was organized. It had received special powers under Decree No. 2771, and there was some concern that areas under the control of the judicial police accounted for more than their share of reported human rights violations. It was important for the judicial police to act within the law at all times.

17. Mr. WENNERGREN commended the Government on its report which complied with the Committee's guidelines, giving both the legal framework and a clear picture of the real situation.

18. The concept of immunity for official acts could cloak a great deal of evil, and had, indeed, caused many problems in Colombia in the past. He stressed the importance of having an impartial and resolute judiciary and judicial police and body of prosecutors, and asked what guarantees existed to that end in the context of investigations, and whether members of the armed forces had been involved in any extrajudicial killings or any other abuse of

(Mr. Wennergren)

authority. If so, it would be interesting to know how the State had responded in terms of police and court action, and what guarantees of impartiality existed.

19. Mr. Pocar took the Chair.

20. Mr. CEPEDA (Colombia), commenting on the relationship between the Covenant and the Constitution, said that the Covenant enjoyed a supralegal status, intermediate between the law and the Constitution. Under the Constitution, judges, in interpreting provisions relating to rights, were bound to take account of the provisions contained in international instruments to which Colombia was a party and to place the broadest possible construction on the enjoyment of human rights.

21. The Government was going to great lengths to ensure compatibility between earlier legislation and the new Constitution. A special legislative commission had been established to that end, and some 70 bills were currently before Congress, of which many related to human rights and one dealt with states of emergency. The new Constitution expressly embodied the principles of international humanitarian law, which prevailed even in the case of armed conflict within the country. The Optional Protocol to the Covenant had been ratified, and the Second Optional Protocol was about to be submitted to the legislature.

22. He regretted that the Constitution was not available to the Committee in English, since it had been translated both into English and into a number of indigenous languages for the benefit of the country's minorities. The aim was to provide speakers of languages other than Spanish with access to the Constitution to enable them to combat injustice.

23. The new Constitution was imbued with an egalitarian aim, an example of which was the desire to facilitate access by minorities to political power. For example, it provided that at least two members of the Senate must be from indigenous groups. A special commission was being established to study the status of the black population of Colombia, and would have full representation from that community.

24. In keeping with the provisions of the Covenant, the Constitution prohibited discrimination on the basis of race, religion, colour, family or national origin, or sex, and, constitutional rights were extended to all, irrespective of their social and economic status. Affirmative action provisions ensuring that poverty should not be a barrier to the enjoyment of constitutional rights had also been adopted.

25. With regard to military penal jurisdiction and obedience towards superior officers, the new Constitution had maintained the latter principle with a different focus. The new provisions reflected the need for clear lines of

(Mr. Cepeda, Colombia)

command in conflict situations, which were an everyday reality in Colombia. Given the constitutional provision that clauses relating to rights were to be interpreted in the light of Colombia's international obligations, it followed that the scope of article 91 of the Constitution was restricted, and that the defence of acting under orders could not be used to justify, for example, acts of torture. Few such defences were attempted in practice. Moreover, where such defences had been upheld by military jurisdictions, the Council of State had ordered that damages be awarded and that the conduct of those involved, including senior personnel, be investigated.

26. The new Constitution also changed the status of the military in that it had broken with the tradition of appointing an officer to head the Ministry of Defence. That position was now held by a civilian, who was accountable to the Congress, and who had a constitutional obligation to educate members of the armed forces in human rights matters and in the provisions of the Constitution relating to democratic freedoms.

27. Mr. MELO (Colombia) said that the Colombian army was relatively small and that military expenditure was commensurately low. Further, in general, the army had not been granted extraordinary authority, with the exception of provisions relating to the earlier state of siege, which had been more or less completely rescinded under the impact of jurisprudence and the new constitutional provisions. For example, whereas, the army had previously had the right to try and condemn alleged subversive elements, it had lost that authority as a result of a Supreme Court ruling in the mid-1980s. Currently the armed forces had no legal authority over civilians. The military intelligence services could not act in a judicial police capacity, although other State intelligence organs, under the authority of judges, could. The Constitution specifically prohibited the internal investigation services of the armed forces from having any jurisdiction over civilians, including during states of emergency.

28. The armed forces had a system of internal jurisdiction, with an administrative branch, empowered to impose administrative sanctions, such as suspension from duty. In addition, the Office of the Attorney-General, which was an independent civilian authority, exercised authority over the army and the police. A prosecutor appointed by the office of the Attorney General had authority to take the place of the army or police authorities in the event of administrative action concerning a member of those forces. The Office had authority to award damages, where appropriate. Such procedures were independent of criminal procedures. The machinery thus provided an important civilian control component.

29. It was true that the number of cases in which punishment was imposed was only a fraction of the number of complaints received against the armed forces; however many complaints were couched in such vague terms that no real prospect of investigation existed. A decision not to investigate was based on those grounds, and not on any concept of official immunity. The severity of punishments handed down was increasing.

(Mr. Melo, Colombia)

30. Because of the greater transparency and the Government's determination to act, the number of violations had declined and public confidence had increased. Members of target groups, such as journalists and civic leaders, were aware that cases would be dealt with by the civilian and not the military authorities. One important element was confidentiality for those submitting complaints.

31. Regarding the claims that so-called "paramilitary" groups included members of the armed forces, he said that while that might have been true in the past, under the new situation there was much less evidence of military involvement. Such cases as surfaced seemed to involve low-ranking members of the armed forces corrupted by drug traffickers in the areas in which they were serving. An example would be the handing over of military information enabling paramilitary groups to target individuals. There was something of an image problem, since for many years Colombia had ignored the situation; that, however, was no longer the case.

32. A similar phenomenon occurred with the "social clean-up" vigilante groups, which murdered criminal elements, for example low-level drug traffickers. The victims generally had no links with any political activity. The prevailing view was that such "clean-up" were the work of guerrilla groups, attempting to garner support in an area by ridding it of criminals. It had been reported that one such group had killed some 150 criminals in Medellín over the course of a year. Other instances seemed to involve members of the armed forces who had been imprisoned, but released, and who engaged in "social clean-ups" to pre-empt retribution by criminal groups. A number of police officers were currently under investigation for such alleged activities. Other deaths resulted from turf wars between various drug gangs.

33. He was not suggesting that the State was absolved of responsibility. The Government was fully aware that it must act quickly and effectively and punish those responsible. Colombia was seeking to eradicate all such activities, as required under its international obligations, which, to date, it was clearly not fully meeting.

34. Official statistics received by the Office of the PresidentiaL Adviser demonstrated that there had been a significant decrease in the number of reported disappearances. In addition, only two rural massacres had been reported in 1991, compared to dozens in 1988 and 1990. Those two cases were still under investigation and appeared to involve extrajudicial executions, in the one case, and, in the other, the slaughter of indigenous people by drug-trafficking gangs with the possible complicity of the local police. He regretted that the information in the international media was sometimes misleading but noted that the reports carried by some NGOs, in particular Americas Watch, were very accurate.

35. There was a tendency for rural populations to regard the security forces with hostility and not to report the presence of paramilitary groups. Efforts

(Mr. Melo, Colombia)

were currently being made to secure greater cooperation from rural populations and to improve military intelligence in those areas. In 1991, a number of paramilitary groups had been disarmed in areas where their activities had been very widespread and those areas were currently peaceful. Efforts were also being made to increase the presence and visibility of the army in areas where there was evidence of large-scale paramilitary activities.

36. Mr. CEPEDA (Colombia), replying to Mr. Serrano Caldera's question concerning the system for the protection of rights, said that Colombia had a relatively well-developed system for the judicial monitoring of the Constitution, which had been supplemented with important new measures.

37. A public action of unconstitutionality could be brought by any citizen who had attained his majority, irrespective of whether he had a direct interest in the case. The purpose of such an action was to obtain a binding pronouncement on the courts which would remove from the legal system any provision found to be unconstitutional. The mechanism, which gave extensive power to ordinary citizens to monitor the proper observance of the Constitution by the State, was used frequently. Some 150 actions of unconstitutionality were brought before the Courts every year.

38. Another very popular mechanism was the remedy of tutela, which enabled any citizen to seek, before the courts, the protection of his fundamental rights and of such collective rights as the right to the environment. In addition, there was a broad provision in Colombian law, establishing that any legal action which was found to be contrary to the Constitution could be set aside by the judicial authorities and the Constitution applied instead. That provision was called the exception of unconstitutionality or the preferential application of the Constitution, and it could be brought in the course of any proceedings, including those under military penal law, thus rendering the new Constitution effective in all areas of law. Final responsibility for the application of the appropriate norms rested with the judges and if it was felt that the courts of last instance had ruled in violation of the Constitution, an action of tutela could be brought before the Constitutional Court, which would be the ultimate arbiter.

39. Tutela could be invoked by any individual who felt that his fundamental civil and political rights were threatened, as well as by public defenders or municipal authorities. Such actions could be brought before any judge, thus rendering all judges in Colombia guardians of the rights established by the Constitution and avoiding the concentration of the judicial defence of the Constitution in a single organ.

40. The tutela system tended to favour the complainant, who was under no obligation to appear with an attorney, to cite norms of the Constitution or to give any juridical foundation to his case: he needed only to describe the de facto situation and, in an emergency, his report could be presented orally. Unless the accused party refuted the allegations within three days,

(Mr. Cepeda, Colombia)

the substance of the tutela report was deemed to be true. A judge could, without waiting those three days, order any measures necessary to end the alleged violation, including the suspension of any legal norm in force.

41. Judgement in tutela cases had to be handed down within 10 days and all such judgements were submitted to the Constitutional Court, which had the authority to review them, particularly where the development of constitutional law was involved.

42. The tutela mechanism was easily accessible to citizens and, consequently, frequently used in Colombia. Since it had come into force at the end of 1991, the courts had handled more than 1,700 cases.

43. With reference to the question about how the Covenant was applied independently of the Constitution, he said that the Covenant enjoyed supralegal status and that numerous important judgements in application of the Covenant, involving evidence of torture or mistreatment by the public authorities against detainees or prisoners, had been invoked by the Council of State prior to 1991.

44. It was the responsibility of judges to guarantee the Constitution and to uphold its provisions. Any internationally recognized right, including those not explicitly listed in the Constitution, would be protected as if they enjoyed constitutional status.

45. In response to Miss Chanet's comment that the adversary system might benefit organized crime, he said that efforts were under way to improve the entire investigative system to ensure a more efficient and organized response to the problem of organized crime. Previously, examining magistrates had been at serious risk and, as a result, investigations had been dropped, and judges had lost their lives. Recent new measures had brought favourable results and a number of crime bosses had voluntarily submitted to justice, hoping for a reduction of their sentences to one third in return for confessions and cooperation. He hoped to see that positive trend continue to the point where, despite the complexity of the situation and the risks involved, the problem of organized crime in the country could be successfully resolved.

46. The authority of the Office of the Attorney-General had been extended to include supervisory and disciplinary powers over the judicial police, as set out in the Code of Penal Justice.

47. With regard to the issue of the protection of judges, he said that considerable steps had been taken to protect the right to a proper trial, a proper defence and a judge. Among the measures taken to protect judges, who previously had been faced with the choice between submitting to threats or risking their lives, were the creation of a 3,600 strong protection team and the holding of training seminars for judges and those protection agents in

(Mr. Cepeda, Colombia)

defence techniques. Money raised from the sale of confiscated drug trafficking products had been diverted to the protection of judges and the strengthening of justice; the United States Government had also donated US$ 900,000 to Colombia for those purposes.

48. Judges were currently concentrated in five cities and the most effective way of protecting them was the system of anonymity, whereby their identity was not known by the parties or the defence lawyer. Judges had to sign the sentences, which were kept in a secret place. That system, while highly effective, had one major drawback in that it impeded the challenging of evidence and, consequently, the guarantee of a fair trial. To overcome that problem, legislative measures had been adopted at the end of 1991 stipulating that evidence could be challenged during pre-trial proceedings and during the trial itself. Evidence could only be challenged during the preliminary investigation when the life of witnesses was at stake. Measures had also been taken to protect witnesses, thereby ensuring the trustworthiness of any testimony submitted.

49. Colombia faced the difficult problem of striking a balance between the need to combat organized crime, on the one hand, and the need to ensure the enjoyment of fundamental rights, on the other, and the current relatively low incidence of abuses indicated that the measures adopted were taking effect.

50. Mr. MELO (Colombia), referring to Mrs. Higgins' request for further information on section I (f), said that detailed information on each separate point would be provided at the Committee's next meeting.

51. Mr. CEPEDA (Colombia), responding to Mrs. Higgins' question on the suspension of rights during a state of emergency, said that the Constitution stipulated that human rights and fundamental freedoms could not be suspended. Since the reason for the declaration for a state of emergency was to limit such rights, the Constitution also stated that statutory laws could specify what limitations might be placed on rights in a time of upheaval, but those limitations did not apply to rights that could not be derogated from under international law. A bill was currently before Congress on the guarantee of the rights set forth in the Pact of San José.

52. In specific circumstances, where there was good reason to believe that violence was about to occur, certain individual rights could be suspended, but there could be no general suspension of the Constitution.

Right to life, liberty and security of the person and treatment of prisoners and other detainees (articles 6, 7, 9, 10 and 11) (Section II of the list of issues)

Right to a fair trial (article 14) (Section III of the list of issues)

53. The CHAIRMAN read out section II of the list of issues concerning the third periodic report of Colombia, namely: (a) elaboration on measures taken to investigate cases of disappearance, extrajudicial executions or torture, to punish those found guilty and to prevent the recurrence of such acts, and any difficulties in that regard; (b) changes, if any, to the rules and regulations governing the use of firearms by the police and security forces, violations thereof, if any, and measures taken to prevent their recurrence; (c) current rate of infant mortality and comparison of that rate among the ethnic groups with that of the general population; (d) measures taken to ensure the strictest observance of article 7, and whether confessions or testimony obtained under torture could be used in court proceedings; and (e) information on arrangements for supervision of places of detention and on procedures for receiving and investigating complaints.

54. He then read out Section III of the list of issues, namely: (a) guarantees for the independence and impartiality of the judiciary, and description of measures adopted to prevent intimidation of members of the judiciary; (b) information on the legal and administrative provisions governing tenure, dismissal and disciplining of members of the judiciary; and (c) whether any judges performed their functions anonymously and, if so, information concerning their appointment and activities.

55. Mr. MELO (Colombia) said, with reference to section II (a), that the surest response to the problem of disappearances, extrajudicial executions and torture, was to take measures to prevent their occurrence, through strict supervision of the military and security forces. Previously, lower ranking officials had assumed that they could commit such acts but there had recently been an improvement in the attitude of members of the military and security forces, in response to the firm stand adopted by the President. Senior military officers had condemned such illegal actions and there had been official requests to external bodies to investigate allegations of such violations perpetrated by the military. It was also essential to ensure that such crimes were promptly reported to the judicial authorities.

56. The issue of disappearances - which generally involved homicide and subsequent concealment or dumping of the body - remained one of grave concern. The absence of a body made it very difficult to prove that a crime had been committed and seriously impeded the investigation processes.

57. To remedy that situation, a comprehensive machinery had been set up to follow up disappearances and to coordinate cases of disappearances with those of unidentified bodies, of which a large number were discovered in Colombia. To that end, a new national investigative body, the Fiscalía, had been

(Mr. Melo, Colombia)

established to coordinate such investigations and assist with the identification of corpses even when they were discovered in areas remote from the victim's place of residence. Since May 1991, it had been operating on an experimental basis in various parts of the country and, in accordance with the presidential decree, it would eventually be functional throughout the country.

58. The new Code of Penal Procedure established measures intended to reduce the possibility of torture while in detention. In 1991, the length of time an individual could be detained before being charged had been reduced to five days in civil cases and 24 hours in cases of detention under military jurisdiction. The maximum term of custody of a suspect was 36 hours. In addition, the Red Cross had been given access to all places of detention, under both police and military jurisdiction, and so far it had reported no undue problems in meeting with prisoners. Public attorneys and municipal officials could also visit prisoners, and the police and the military were required to notify municipal officials immediately within 24 hours of any arrest. Another protection was the requirement for immediate access to a lawyer upon arrest.

59. He did not know which had made the most difference - the Red Cross and other official visits, the legislation, a better attitude on the part of the military authorities, the human rights education of the police and the military, the better technical methods of investigation - but the fact remained that complaints of torture had dropped drastically.

60. With regard to section II (b) of the list of issues, it was also crucial to reduce the number of firearms in the hands of individuals. Traditionally the police and security forces had been granted permits to possess private firearms as well, but part of the Government's strategy against violence was to reduce the volume of such weapons in private hands. It had established a national registry of all permits issued, and there was also a proposal to reduce the scope of such permits.

61. With regard to section II (d), there was no possibility under the law of using evidence obtained through torture.

62. With regard to section II (c), the Government's action to combat infant mortality was showing visible results. Whereas in 1970 there had been 90 infant deaths per thousand, by 1992 the figure had dropped to 37 per thousand, more or less the level of European countries in the 1960s. In the indigenous or minority communities, the infant mortality rate had unfortunately declined much less rapidly, not so much because of ethnic discrimination but because such groups lived in inaccessible areas. The problem was common to the entire rural population and since the censuses did not distinguish by ethnic group it was difficult to give precise figures. The average infant mortality rate in rural areas was 50 per thousand as against 20 per thousand in the cities.

63. Mr. CEPEDA (Colombia) said, further to section II (d) of the list of issues, that article 29 of the Constitution nullified any evidence not freely given, and that the Constitution also contained provisions against degrading, cruel or inhuman treatment. Indeed, the laws on that point were very scrupulously applied in the country.

64. With regard to section III (b) of the list of issues, he explained that the new Constitution established a special regime for the judiciary. Formerly, a system of co-option - the appointment of judges by invitation of existing judges - had been followed along hierarchical lines, in order to safeguard the independence of the judiciary. There had also been a hierarchical disciplinary authority within the judiciary, and disputes had been settled in the last instance by a disciplinary court. Under the new system, that court had been subsumed into the Higher Adjudication Council, whose basic aim was to safeguard the independence of the judicial branch by overseeing all financial and budgetary matters and all disciplinary matters. It was composed of impartial, independent magistrates who monitored and assessed the performance of judges, and established the lists of magistrates from among whom the Council of State and the Court would appoint members of the Adjudication Council itself and all departmental and court magistrates. In addition, there was a special Procurator's Office that evaluated and could in certain instances discipline judges. As to the appointment of the anonymous judges, they were attached to a special court with established links to the so-called regional judges and the national courts so that they could not be interfered with either by the Executive Branch or by organized crime; and their system of appointment sought to safeguard their independence and autonomy.

65. Mr. EL-SHAFEI, referring to article 6 of the Covenant, asked what effect the various human rights bodies set up by the Government (para. 88 of the report) had had on holding down the murder rate - which according to certain figures had risen, especially in the case of political killings. He would like more specific information on the measures taken to prevent extrajudicial executions by the police, how the Government handled complaints in that regard and whether there had been any arrests or convictions; on measures to stop mass murders by paramilitary groups and to control the actions of the military; on what procedures were followed when a member of the military was accused of murder or was prosecuted for suspected murder in the absence of any complaint.

66. Under article 7, he asked what the Government had done to investigate complaints of torture and to ensure that torture was not practised in prisons; how many officers had been prosecuted for torture and whether there were procedures guaranteeing against reprisals in the case of officers reporting incidents of torture by fellow officers. He would like detailed answers and figures.

... Miss CHANET, noting that the report said little on article 9 of the Covenant because much of the relevant legislation was recent, asked whether the period during which a suspect might be held in police custody, which had apparently been reduced from 10 days to 36 hours under the new legislation, was the same under the 1990 Anti-Terrorist Act and under a state of emergency; and whether administrative detention was a possibility in Colombia in the absence of a criminal offence. She wondered what the average period of pre-trial detention was, whether suspects thus detained were always held in prisons and whether the date of their detention and the charge on which they were being held were always officially registered. Also, were such detentions always monitored by magistrates, were there any incommunicado detentions, and were detainees examined by a doctor?

68. With reference to article 10 of the Covenant, she would like more information regarding article 233 of the Penal Code in the light of the International Labour Office comment on the possibility of working while incarcerated.

69. Mr. PRADO VALLEJO, referring to the right to security of the person under section II of the list of issues, asked what programmes the Government had established to assist the many thousands of persons in Colombia displaced by the violence, whether any associations had been established to help them and what success had been achieved in improving their conditions.

70. Mr. MELO (Colombia) said that he would reply as to the legal aspects of Mr. El-Shafei's questions. Detained persons could remain silent and could not be forced to testify against themselves or their families. Lawyers could visit prisoners at all times, there was no longer any incommunicado detention under the new legislation and the presence of counsel was required when the detainee's first testimony was given, except in cases of imminent death.

71. With specific regard to torture, the access to prisons by the Red Cross and the notification of municipal personnel had had a very real effect. The various human rights bodies, public attorneys and lawyers from the Office of the Attorney-General whose task it was to monitor the condition of prisoners routinely visited the jails. Complaints of torture in places of detention were now virtually non-existent, although some complaints were still received of torture during the time of transfer to a place of detention after capture. Guerrillas caught in flagrante delicto were taken to military bases but could be held there only temporarily while transfer to ordinary prison was arranged. In the past year and a half, the Government had taken general measures to deal with problems arising from existing legislation or from general policies or decisions adopted by the military, the police or the judiciary that had created conditions possibly conducive to human rights violations.

72. Specific cases of torture that had occurred under the old system were still being investigated. He did not have the exact figures, which would be supplied subsequently together with other figures requested, but there were over 100 cases of police or military personnel accused of torture.

(Mr. Melo, Colombia)

73. Both administrative and penal procedures were involved. Cases involving torture, disappearances, homicide and extrajudicial executions were dealt with under penal procedures. The constitutional law on the matter had remained unchanged, although it was now being interpreted much more broadly. The military penal courts had remained in place, and they tried crimes that had been committed in the exercise of duty. The Supreme Court had ruled, however, that a military officer in civilian dress or operating off-duty could not claim to be acting in the exercise of duty. Under the earlier system, the disciplinary court could assign cases of torture or disappearance either to ordinary criminal courts or to military jurisdiction. Currently, under the new legislation, the High Court of Justice, which now had the task of assigning jurisdiction in specific cases, exercised much higher authority and much more independence in acting to bring culprits to justice. It was hoped that most cases of human rights violations by the military could be kept in the ordinary courts.

74. As to the administrative sanctions in such cases, over 200 military or police personnel accused of crimes against persons, such as murder, mass murder, torture or violent acts in prison, had been suspended; and in the period 1990-1991, 20 had been discharged.

75. He could not give much clarification on the cases of political crimes. Many crimes were automatically presumed to be political - such as any murder of a teacher - and were listed as such, although lately such crimes were more likely to be more social than political. A problem of lack of information was involved.

The meeting rose at 6.10 p.m.